

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3693 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAJRAS MANILAL PARMAR

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR GR UDHWANI for the Petitioner

MR NIGAM SHUKLA for Respondents No. 1,2 & 3

MR PM THAKKAR for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, who is holding the post of Auto Electrician has filed this Special Civil Application before this Court and prayed for the relief as extracted below.

(A) Your Lordships may graciously be pleased to issue a writ of mandamus or a writ in the nature of

mandamus and/or any other appropriate writ, order or direction directing the respondents to promote the petitioner to the next promotion post and to fix his salary in the payscale of Rs.350-560 and to give him all the consequential benefits retrospectively from the date when juniors to the petitioner have been granted the said scale ;

(B) Your Lordships may graciously be pleased to direct the respondents to give to the petitioner selection grade ;

(C) pending the admission, hearing and final disposal of this Special Civil Application, Your Lordships may graciously be pleased to restrain the respondents from giving promotion to any person to the post of Senior Electrician and/or Mechanic except the petitioner ;

(D) Your Lordships may graciously be pleased to award costs of this Special Civil Application ;

(E) Your Lordships may graciously be pleased to pass such other and further order/s as may be deemed fit in the interest of justice ;

This Court has granted the interim relief to the petitioner in terms of Para 21(c) which subsequently appears to have not been extended.

2. The petitioner has made a grievance that though he is senior, many juniors have been given promotion in the pay scale of Rs.350-560 whereas he has been left out. The petitioner in Para no.11 has given out the names of juniors to him as well as the person who was holding the lower post than him who have been given promotion to the higher posts. The reference in this respect has been made to the case of Shri A.D. Christian, R.H. Luhar and H.T. Surti. In Para no.12 of the Special Civil Application, the petitioner has given out the details of the juniors who have been given the promotion.

3. The learned counsel for the respondents no.1,2 and 3 submitted that the reply to this Special Civil Application has been filed, but that reply is not available on record. The learned counsel for the petitioner admits that the respondents have filed reply to this Special Civil Application and the copy of the same has been sent to him. I have taken the copy of the reply from the counsel for the respondents and perused the same. The averments made in paras no.11 and 12 of the petition have been denied.

4. The respondents have come up with a case that the persons named as juniors in these two paras are not juniors to the petitioner. This court has consistently put a question to the counsel for the petitioner show how the claim of promotion of the petitioner is justified when the respondents have denied the fact that he is senior to the persons named in the aforesaid paras. The petitioner has not produced on record the seniority list prepared in which he has been shown senior to the persons named in the aforesaid paras. No such list has been produced by the petitioner, and the counsel for the petitioner is unable to give out any explanation for non filing of such a vital, important and basic document of the claim made by the petitioner in this Special Civil Application. The counsel for the petitioner has failed to show how that the petitioner is senior to those persons. The court has given out to the counsel for the petitioner that the seniority is to be established by seniority list and not on the basis of some dates of appointments. Moreover, when the persons named in the aforesaid paras, some of them have been appointed on different posts and they have been given promotion years back, this claim of the petitioner that he is senior to those persons cannot be accepted. In the service matter, the seniority of the persons is determined and the seniority list prepared is the best and only substantive piece of evidence to establish the seniority and to satisfy the court for the claim of senior above juniors. Merely on the basis of some date of appointment and some other facts this court will not take the job of respondents to lay down the seniority of the concerned persons. It is not the job of this court to embark upon the inquiry after going on the facts of the case when it is not the case of the petitioner that the seniority list has not been prepared. The petitioner has tried to make attempt to confuse the things. The supersession of the senior in promotion cannot be taken on the statement of the petitioner that he is senior unless the same has been established by producing final seniority list. The very foundation of the contention and the claim made by the petitioner is missing in the present case. In view of this fact, it cannot be said that the petitioner is senior to those persons and he has been superseded by them. Moreover, the counsel for the petitioner, as stated earlier, insisted that this Court should determine the seniority, but in case this exercise is undertaken and a final version has been given and the claim of the petitioner is accepted then the decision of the court will be against the principles of natural justice. Such a vital issue cannot be decided behind the back of the

persons over whom the petitioner is claiming himself to be senior. In the matter of determination of seniority even the department has to follow the procedure in consonance with the principles of natural justice. Firstly, a provisional seniority list is published inviting objections from the affected persons and thereafter considering the objections, if any, final seniority list is issued. In the present case, what the learned counsel for the petitioner has insisted that this Court should undertake an exercise to determine the seniority behind the back of those persons. No order or any decision which may cause prejudice to the persons concerned who are not before this court should be made.

Taking into consideration the totality of the facts of the case, I do not find any substance in this Special Civil Application and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

zgs/-